National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: December 5, 1995

TO: Richard L. Ahearn, Regional Director, Region 9

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Distillery, Wine and Allied Workers, International Union, Local 13, AFL-CIO, (Joseph E. Seagrams & Sons Distillery, Inc.), Case 9-CB-8819

133-9000, 536-5050-3393, 536-5075-5025

This case was resubmitted for advice as to whether the Union violated Section 8(b)(1)(A) of the Act by fining and suspending a member for filing a sexual harassment complaint with the Employer about another Union member, in light of a Determination by the U.S. Equal Employment Opportunity Commission (EEOC), finding no violation of Title VII of the Civil Rights Act of 1964, as amended.

FACTS

The facts of the instant case are set forth in full in Distillery, Wine and Allied Workers International Union, Local 13, AFL-CIO (Joseph E. Seagrams & Sons Distillery, Inc.), Case 9-CB-8819, Advice Memorandum dated September 20, 1994. In brief, Nadyne Vinup (the Charging Party), is a member of Distillery, Wine and Allied Workers International Union, Local 13, AFL-CIO (the Union) and an employee of Joseph E. Seagrams & Sons Distillery, Inc. (the Employer). Vinup was verbally confronted at work by a fellow Union member and employee, John Sexton. Sexton's outburst was ostensibly in response to comments in favor of a smoke-free workplace made by Vinup, who has an asthmatic respiratory condition. During this altercation, Sexton called Vinup a hypocrite and a liar. Vinup believed that Sexton's remarks created a "hostile environment" within the Employer's unilaterally implemented sexual harassment policy, and Vinup thereupon filed a complaint with the Employer pursuant to that policy.

When Sexton learned of Vinup's sexual harassment complaint regarding him, he filed intra-Union charges alleging that Vinup had "turned him into the company." A trial was held, in which a Union committee determined that the sexual harassment complaint that Vinup had filed with the Employer was "false and frivolous" and that the incident itself "was only a disagreement over smoking." The Union placed Vinup on probation and assessed a fine of $500, which was suspended, "pending [her] successful completion of the probation period without further incidents."

Vinup thereafter filed the instant charge, alleging that the Union's discipline violated Section 8(b)(1)(A) of the Act. Vinup also filed a charge of discrimination with the EEOC alleging that the Union's discipline unlawfully "retaliated against [her] for having exercised [her] rights under Title VII of the Civil Rights Act of 1964, as amended."

In our previous memorandum in the instant case, we concluded that there was no basis for finding that an 8(b)(1)(A) violation has been established, "unless the Union's actions impaired a 'policy Congress has imbedded in the labor laws.'" We found the only such policy that might have been impaired by the Union's conduct to be the protection against retaliation for having exercised rights under Title VII. Therefore, because the only issue presented in the instant charge was identical to that contained in Vinup's EEOC charge against the Union, and because the EEOC is the agency charged with primary responsibility in these matters, we instructed the Region to hold this charge in abeyance pending the EEOC's consideration of its case.

On May 8, 1995, the District Director of EEOC's Indianapolis District Office issued his Determination, finding no violation of Title VII of the Civil Rights Act of 1964, as amended. In particular, the Determination found, "[e]vidence shows that there was no basis for the sexual harassment complaint," and that, "[t]here is no evidence that Respondent retaliated against Charging

Party for having filed a complaint of sexual harassment."

Upon the issuance of the EEOC's Determination, the Charging Party had 90 days to file suit or she would lose her right to pursue this matter further.[(1)] The Region has telephonically informed the Division of Advice that the Charging Party filed no suit within the required 90 day period. Thus, the EEOC's adverse determination is the final resolution of her Title VII case.

ACTION

We conclude that the instant charge should be dismissed, absent withdrawal. In our previous memorandum in the instant case, we concluded that it was more appropriate that the EEOC, the agency charged with primary responsibility in these matters, determine those issues, since the issue presented in the instant charge and that contained in Vinup's EEOC charge are identical. The EEOC has now determined that the evidence does not establish the Charging Party's Title VII allegation. Thus, there is no basis for a finding that the Union's conduct impaired a policy Congress has imbedded in the labor laws or violated Section 8(b)(1)(A) of the Act.

Accordingly, the instant charge should be dismissed, absent withdrawal.

B.J.K.

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[1] EEOC Determination, at 2 ("THE CHARGING PARTY MAY ONLY PURSUE THIS MATTER FURTHER BY FILING SUIT . . . WITHIN 90 DAYS OF THE CHARGING PARTY'S RECEIPT OF THE LETTER. Therefore if a suit is not filed within this 90 day period, the Charging Party's right to sue will be lost" (emphasis in original); Section 706(f)(1) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(f)(1).